



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Steven M. Boyle  
14 Germantown Road  
Derry, NH 03038

Re: Big Island Pond

**ADMINISTRATIVE ORDER  
No. AO WD 01-19**

**May 7, 2001**

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Steven Boyle pursuant to RSA 482-A:6. This Administrative Order is effective upon Issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Steven M. Boyle is an individual having a mailing address of 14 Germantown Road, Derry, NH 03038.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in surface waters of the state, shorelines of surface waters, and in wetlands. RSA 482-A: 11 authorizes the Commissioner to adopt rules to implement the wetlands program. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Wt 100-700.
2. Steven Boyle is the owner of land located at 14 Germantown Road, Derry, NH with 50 feet of frontage on Big Island Pond, more particularly described on the Derry tax maps as map 19, lot 87 recorded at Book 3145, Pages 553 to 555 ("the Property"). Mr. Boyle purchased the Property on March 20, 1996.
3. In March 2000, two members of the Big Island Pond Shoreline Committee visited the Property and spoke with two individuals who were working in jurisdictional areas at the Property. They provided these individuals with DES Fact Sheets on wetlands jurisdiction and the wetlands permitting process, and a standard dredge and fill application, and recommended that the individuals not do more work in jurisdictional areas on the Property.

4. On April 11, 2000, DES received a complaint from the Big Island Pond Corporation which stated that "Judging by the contour of the shoreline and the adjacent walls along the shoreline, it appears the wall (75 feet long approximately) was built approximately 15 feet further out into the lake than it was before. All work was done without a permit."
5. The April 11, 2000 complaint included photographs taken in March, 2000 while the work was in progress. The photos show that the lake was drawn down, the stacking of the wall was in progress, at least one large stump was exposed at the natural shore, the area behind the wall was not backfilled, a Taylor Rental Bobcat # 763 was parked in the work area, and the two men who were working at the Property.
6. On April 12, 2000, DES requested property and tax map information from the Derry tax assessor and received the information on April 13, 2000.
7. On April 17, 2000, DES sent a letter to Mr. Boyle notifying him that DES had received a complaint regarding his wall construction, informing him of DES wetlands jurisdiction and enforcement authority, and requesting that he respond in writing to the allegations.
8. On May 24, 2000, DES received an application from Mr. Boyle that described his proposed project as "Built a retaining wall in place of old eroding wall." When explaining the need for the project, Mr. Boyle wrote: "The erosion of our shore line was taking place, we needed to repair or replace the wall. The old wall was made of stone. The new wall is made of diamond block with proper drainage and is filtered with crushed rock."
9. In a cover letter to the application, Mr. Boyle stated, "Our property (lake frontage) has always been an uneven [sic] and always jetted out more than our neighbors on either side of us. Also the land went down at a slant into the water. So what we did was build from the bottom of that slant and built straight up. We also were told at the end of March that in about 5 days the water would be back up. So we made a rash decision and yes maybe an ignorant one, but we decided to hurry up and put the wall up."
10. On June 1, 2000, DES requested more information from Mr. Boyle regarding his application
11. On June 7, 2000, DES received a letter and photos from Arthur and Rita Rother, neighbors to the Property, that stated, "I'm writing to let you know that with the rain we have had lately there is erosion along the wall that faces us. When that happens the water in front of our house becomes brownish with silt. I've taken pictures to show the erosion should you want them in the process of this complaint."
12. On June 27, 2000, DES personnel met with the Rotheres and other neighbors, the Cunninghams, viewed a videotape of the Property taken on October 22, 1996, and received photos of the Property dated from 1996 and 2000.

13. On June 27, 2000, DES personnel inspected the Property and found the following:

- (a) A wall measuring approximately 89 linear feet in length, 4 feet and 6 inches in height had been constructed in and adjacent to Big Island Pond;
- (b) Six steps measuring approximately 7 feet wide had been built in the shoreline and as part of the wall;
- (c) The wall was approximately 24 feet from the corner of the Boyle residence at its furthest extension; and
- (d) On one side of the wall, there was a weep hole landward of the wall where the fill had eroded. Through the cavity into the lake, the water could be seen moving in sync with the lake.

14. Examination of the 1996 photos and video reveal the following:

- (a) The shoreline was well-vegetated and showed no problems with erosion;
- (b) The northwestern front corner of the house was located approximately 16 feet from the high water line of the lake;
- (c) The shoreline was armored by rounded stone rocks and the elevation of the rocks was approximately 1 foot at most above the bed of the lake; and
- (d) There was a narrow two-step access.

15. On August 30, 2000, DES personnel reinspected the Property with Mr. Boyle's environmental consultant, Michael Seraikis. During this inspection, soil auguring was done in an attempt to locate the prior shoreline and buried stumps. No buried stumps were found and it was difficult to find the location of the original shoreline. Mr. Seraikis stated that he would prepare a restoration plan to remove the wall and a planting plan to replace lost trees.

16. On December 6, 2000, DES personnel met with Mr. Seraikis to review the file and what would be required for restoration of the Property. Mr. Seraikis submitted a restoration plan for the Property.

17. On January 29, 2001, DES personnel spoke with Mr. Seraikis and explained that the southern corner of the frontage did not show sufficient removal. Comparison of historical photographs with the restoration plan showed that the filled shoreline needed to be brought landward another 9 feet. Mr. Seraikis indicated that a revised restoration plan would be submitted within 30 days.

18. To date, DES has not received a revised restoration plan.
19. RSA 482-A:3, I prohibits the excavation, removal, filling, dredging, or construction of any structures in or adjacent to any water of the state without a permit from DES.
20. Under RSA 482-A:4, II "waters and adjacent areas" is defined as "wherever fresh water flows or stands. .it shall apply to those portions of great ponds or lakes created by the raising of the water level of the same, whether by public or private structure, and to all surface waters of the state as defined in RSA 482-A:2 which contain fresh water...."
21. Under RSA 485-A:2, XIV "surface waters of the state" is defined as "streams, lakes, ponds and tidal waters within the jurisdiction of the :state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial."
21. Under Wt 101.34, "fill" means rock, soil, gravel, sand or other such material that has been deposited or caused to be deposited by human activity.
22. Big Island Pond is a jurisdictional water under RSA 482-A.

#### **D. DETERMINATION OF VIOLATIONS**

1. Steven M. Boyle violated RSA 482-A:3, I by constructing a retaining wall in waters of the state without a permit from DES.
2. Steven M. Boyle violated RSA 482-A:3, I by placing fill in waters of the state without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders Steven M. Boyle as follows

1. By May 15, 2001, install erosion control measures to prevent the sloughing of fill placed behind the wall from entering the lake.
2. By June 1, 2001, submit photographs and cover letter showing that the erosion is controlled
3. Within 30 days submit a revised restoration plan to DES for review and approval. Have the restoration plan prepared by a professional engineer, licensed land surveyor or environmental consultant, and include provisions for restoration the disturbed shoreline and lake bed on the Property. Submit the following with the restoration plan:

- a. A plan with dimensions, drawn to scale showing all of the following: 1) Delineation of the toe of the shoreline as of 1998 in relation to the existing house; and, 2) Delineation of the existing toe of the shoreline in relation to the existing house;
  - b. Proposed conditions (at the 1998 toe) reestablishing the shoreline and removing all of the unpermitted fill and wall construction;
  - c. A cross-sectional view of the slope of the shoreline in at least 3 different locations on the frontage showing the 1998 slope and location in relation to the current conditions and the proposed restoration slope (1998 slope);
  - d. A description of the proposed means of erosion control, such as silt fence, hay bales, etc;
  - e. A description of the proposed planting plan for the stabilization and revegetation of the restoration area;
  - f. A description of the proposed construction sequence, equipment, and methods for accomplishing restoration no later than March 1, 2002;
  - g. A description of the proposed monitoring; plan, including two restoration progress assessment reports to be filed with DES.
4. Implement the removal, restoration, and plantings upon approval and as conditioned by DES.

## **F. APPEAL**

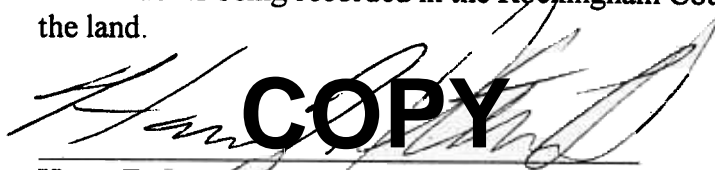
Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action, by filing an appeal that meets the requirements specified in Env-WtC 205 within 20 days from the date of the Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at [www.des.state.nh.us/desadmin.htm](http://www.des.state.nh.us/desadmin.htm). A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if, in its opinion, good reason is provided in the motion. Appealing the Order does not automatically relieve Steven Boyle of the obligation to comply with the Order.

### G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself.

By copy of this Order, this matter is being referred to the Comprehensive Shoreland Protection Program, for investigation of possible violations of RSA 483-B

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

  
**COPY**  
Harry T. Stewart, P.E., Director  
Water Division

  
**COPY**  
Robert W. Varney, Commissioner

Certified Mail RRR: 7099 3400 0003 0690 5214

cc: Gretchen Rule, DES Enforcement Coordinator  
Public Information Officer, DES PIP Office  
NH DOJ-EPB  
Derry Conservation Commission  
Derry Board of Selectmen  
Michael Seraikis  
Wetlands File 2000-580